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5 **BEFORE THE VICTIM COMPENSATION AND GOVERNMENT CLAIMS BOARD**
6 **OF THE STATE OF CALIFORNIA**
7

8 In the Matter of the Application of:

9 **R.C.**

Precedent Decision No. 01 – 04

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11 A hearing on this application was held on June 6, 2001, in Riverside, California, by
12 Judith A. Kopec, Hearing Officer, who was assigned to hear this matter by the Executive Officer of
13 the Victim Compensation and Government Claims Board (Board).

14 The applicant, R.C., attended the hearing.

15 The hearing record remained open until June 15, 2001, so that R.C. could submit additional
16 witness statements. R.C. did not submit any additional documents and the record was closed on June
17 15, 2001.

18 **Claim History**

19 The application was received on August 28, 2000, was recommended for denial on the
20 December 1, 2000, consent calendar, and was appealed. The application requested medical/dental and
21 rehabilitation losses. A completed medical verification treatment form indicated that R.C. received
22 medical services on August 10, 2000, totaling \$362.65 from Kaiser Permanente. R.C. also submitted
23 evidence that he paid \$145.00 to recover his car after it was impounded as evidence.

24 **Summary of Issues**

25 Staff recommended the application be denied because staff determined that R.C. failed to
26 cooperate with the law enforcement agency that investigated the qualifying crime.
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Findings of Fact

On August 10, 2000, R.C. was driving to his former girlfriend's home. As he turned left, a man jumped out from behind two parked cars. He stopped the car to avoid hitting the man. The man turned and pointed a gun at R.C. R.C. bent over to avoid being shot and hit the gas. He heard a pop and realized he was shot in the arm. R.C. drove to his former girlfriend's home. He parked the car across the street and a friend took him to the hospital.

At the hospital, R.C. was interviewed by Officer Gerard of the Rialto Police Department. R.C. answered Officer Gerard's questions before he received any medical treatment. At one point, a nurse wanted to take R.C. for x-rays, but Officer Gerard insisted on asking R.C. additional questions. R.C. became upset; he was in pain and believed that Officer Gerard was interfering with his receiving medical treatment. He testified that Officer Gerard said that she didn't care if he was bleeding to death, he had to answer her questions. Officer Gerard would not permit R.C. to receive pain medication while she was talking with him.

R.C. testified that Officer Gerard repeatedly asked him the same questions. He told her what happened and gave her a description of the perpetrator's clothing. When R.C. returned from having x-rays taken, another officer joined Officer Gerard and R.C. again answered the questions. R.C. became upset with the repeated questioning and called Officer Gerard a "red-headed b----." R.C. testified that in response, Officer Gerard "flipped me off," meaning she raised her middle finger to him.

According to R.C., he answered all the questions asked of him. He provided information about where the crime occurred and gave a description of the perpetrator. He denied being aware of any attempt by a law enforcement officer to contact him once he left the hospital.

R.C. had difficulty recovering his vehicle after it was impounded by the police as evidence. R.C. was upset by Officer Gerard's treatment of him, believing that she treated him as a suspect and not as a victim. R.C. testified that he filed a lawsuit against Officer Gerard.

According to the police report, R.C. initially told Officer Gerard what happened, but became uncooperative when the officer asked him why he did not call the police from his former girlfriend's home. This was right before the nurse took R.C. to have x-rays taken. According to the police report,

1 when R.C. returned from the x-rays, he was agitated and told the officer that the perpetrator tried to
2 steal the car. When the officer asked about the car-jacking, R.C. said he had nothing else to say and
3 directed profanity at her. The police report indicates that R.C. “flipped off” the officer.

4 A supplemental police report was filed in October 2000, by a detective following up on
5 Officer Gerard’s report. It indicated that the detective attempted to contact R.C. without success. It
6 also stated that the detective investigated whether R.C. was a suspect in other crimes in the area, with
7 negative results. The report stated that the case would remain in inactive status because of lack of
8 evidence, R.C.’s inability to identify the suspect, and his apparent lack of cooperation.

9 There is documentation in the file that program staff attempted to contact Officer Gerard
10 four times over a period of two weeks, leaving detailed voicemail messages. Officer Gerard did not
11 respond.

12 The hearing officer provided R.C. additional time to obtain statements from witnesses who
13 could corroborate his testimony, including a friend who was present at the hospital and the nurse who
14 treated him. However, R.C. did not submit any additional statements.

15 **Determination of Issues**

16 Government Code section 13964(a) provides that the Board shall approve an application for
17 assistance if a preponderance of the evidence shows that as a direct result of a crime the victim
18 incurred an injury that resulted in a pecuniary loss. Written reports from a law enforcement agency
19 responsible for investigating the qualifying crime may be relied upon. (Cal. Code Regs., tit. 2,
20 § 647.31.)¹ The applicant has the burden of proving all issues necessary to establish eligibility by a
21 preponderance of evidence. (Reg. § 647.32.) There is sufficient evidence that R.C. was shot and was
22 the victim of a qualifying crime.

23 A victim is not eligible for program assistance if the victim failed to reasonably cooperate
24 with a law enforcement agency in the apprehension and conviction of a criminal committing the crime.
25 (Gov. Code, § 13964(c)(2).) Completely and truthfully responding to request for information in a
26 timely manner is one element of cooperating with law enforcement. (Reg. § 657.1(e)(2).) A victim’s
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29 ¹ All regulation citations are to California Code of Regulations, title 2.

1 physical condition may be considered when assessing whether a victim reasonably cooperated with
2 law enforcement. (Reg. § 657.1(j)(2).) The Program has the burden of proving all issues necessary to
3 disqualify an applicant for failing to reasonably cooperate with law enforcement. (Reg. § 647.32(b).)

4 R.C.'s testimony, appeared to be truthful. He admitted making a vulgar comment to the
5 investigating officer at the hospital. He became upset and somewhat agitated when describing Officer
6 Gerard's continued questioning of him. Although his apparent hostility toward Officer Gerard could
7 indicate animus, it may also be reasonable in light of his belief that he responded to the questions even
8 though he was in pain and wished to receive medical attention.

9 This is a close case. It is undisputed that R.C. became upset with Officer Gerard's repeated
10 questioning of him in the emergency room. However, he responded to her questions about the crime
11 and provided a description of the suspect. It is deeply troubling that Officer Gerard failed to respond
12 to staff's repeated contacts. Considering all of the evidence, there is insufficient evidence that R.C.
13 failed to reasonably cooperate with law enforcement.

14 **Order**

15 The application is allowed and any verified, covered pecuniary losses should be reimbursed.

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18 Date: July 5, 2001

JUDITH A. KOPEC
JUDITH A. KOPEC
Hearing Officer
Victim Compensation and Government
Claims Board

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13 On August 10, 2001, the Victim Compensation and Government Claims Board adopted the
14 attached Decision as a Precedent Decision. The Decision became effective on August 10, 2001.
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16 Date: August 14, 2001

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18 CATHERINE CLOSE
19 Chief Counsel
20 Victim Compensation and Government Claims Board
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